

Application No. 09/482,154
Hall et al.

page 9

REMARKS

Claims 1-22 and 40-45 are currently pending in the application. Claims 1-22 and 40-45 were rejected.

The Examiner rejected claims 1-11 and 40-45 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,035,289 (Chou) in view of U.S. Patent No. 6,230,146 (Alaia). The rejection is respectfully traversed.

Chou describes techniques for the logistics industry which relate to "double auction tradebuilding by matching...a plurality of electronically posted bids with a plurality of electronically posted ask records." See Abstract. The Examiner correctly states that "Chou does not disclose assigning a group identifier to the plurality of units of capacity thereby relating the associated equipment identifiers and using the group identifier for generating a bid." The Examiner then goes on to say that the teachings of Alaia make up this deficiency. The Applicants respectfully disagree.

Specifically, the Examiner referred to Figs. 6A-6D of Alaia. As shown in these figures and described in Alaia beginning at column 4, line 41, information tracking the progress of an auction for commodity lots over time is presented. The various lots of specific commodities (e.g., polypropylene parts) are listed by name and lot number (i.e., lots 01-08). The Examiner referred to the lot number as obviating the claimed group identifiers. The Applicants disagree with this characterization on a number of grounds.

First, the lot numbers of Alaia clearly refer to lots of fungible commodities and cannot therefore be equated with the claimed group identifiers which relate equipment identifiers which, in turn, represent "units of capacity corresponding to specific carrier equipment." As is well understood by those in the logistics industry, the problem of grouping unique, non-fungible assets such as carrier equipment is significantly different than the grouping of fungible commodities. In the latter case, because the commodities are fungible, any parts of the same

Application No. 09/482,154
Hall et al.

page 10

~~type~~ type may be used to satisfy a bid because, by their nature, the parts are interchangeable.

By contrast, because the "units of capacity" recited in the claims of the present application correspond "to specific carrier equipment," they are subject to geographic and time constraints which can severely limit their interchangeability. It is the equipment management techniques of the marketplace infrastructure of the present invention that enable the types of equipment groupings recited in the claims of the present application.

As discussed in the previous response, the use of group identifiers (such as Alaia's lot numbers) does not obviate the claimed group identifiers or the use of group identifiers in the context of the logistics industry. To the contrary, the claimed invention is not obvious specifically *because* of the nature of what is being grouped and the manner in which those groupings are employed.

The present invention relates to "a system for matching carrier capacities with shipper loads via a wide area network." The various embodiments claimed in the present application enable carrier representatives to manage their units of capacity in ways which have not been possible before. For example, claims 1 and 5 allow the grouping of units of carrier capacity for bidding against shipper loads. Units of carrier capacity, e.g., trucks, shipping containers, rail cars, etc., by their very nature are difficult to manage in an aggregate way. That is, individual trucks in a fleet are typically not moving in coordinated ways for any significant periods of time. One truck may be moving from L.A. to Tucson while another may be moving from Seattle to San Francisco. Grouping such units of capacity together does not make much sense unless a system is provided in which a carrier has visibility into the current status of all of his units of capacity, and the technical means for efficiently managing them. The system described in the present application provides such an infrastructure.

That is, because carriers have for the first time the ability to manage their units of capacity in a coordinated way, it becomes possible to aggregate units of capacity in a meaningful

Application No. 09/482,154
Hall et al.

page 11

way. So, in the example described above, the carrier is provided with the kind of visibility into their own available capacity and into the available shipper loads which could enable him to ensure that the truck heading for San Francisco and the truck heading to Tucson eventually end up in the same location such that they could be used in combination to transport a single shipper load. Before the system of the present invention, systems just did not exist which allowed this level of coordination of specific units of carrier capacity.

Similarly claims 6-11 enable bidding the same unit of capacity against multiple shipper loads. This has not been practicable before because of the potential liability a carrier would face for committing the same unit of capacity to multiple loads. That is, if two shippers end up accepting bids for the same unit of carrier capacity, and the carrier is only able to satisfy one of the bids because the same unit of capacity was bid against both, one of the loads will be left sitting on a dock, the shipper will suffer economic damage, the carrier's reputation will be sullied, and the carrier may be liable to the injured shipper for damages.

However, because the marketplace of the present invention provides a variety of sophisticated tools for managing carrier capacity and for matching that capacity with shipper loads, it now becomes possible to bid individual units of carrier capacity against multiple shipper loads without the risk to the carrier of incurring this sort of liability. Claims 40-45, which enable the communication of the number of loads against which a particular unit of capacity has been bid, provide yet another example of the flexibility with which the system of the present invention allows a carrier to monitor and deploy its units of capacity.

Neither Chou nor Alaia teaches the assigning of a group identifier to relate equipment identifiers as recited in the claims of the present application. Chou is completely silent on the subject. Alaia merely refers to lot numbers which are associated with lots of fungible commodities which do not themselves have such "equipment identifiers."

Furthermore, neither of the references teaches the recited equipment identifiers which are

Application No. 09/482,154
Hall et al.

page 12

associated with "specific carrier equipment." To the contrary, ~~the only identifiers to which the~~
Examiner can point are the lot numbers of Alaia which refer to groups of commodities which, by their very nature (i.e., fungible goods), are not anything like the "specific carrier equipment."

In addition, the bids in Alaia's system are not generated using the lot numbers as recited in the claims of the present application. For example, in claim 1, units of carrier capacity are grouped using the group identifier which is then used to generate a bid against a shipper load. By contrast, Alaia's lot numbers refer to the commodities *against which bids are placed*. This is a fundamental distinction.

The Examiner's reliance on the cited references further supports the Applicants' position that the claimed techniques are not obvious. That is, for example, Chou describes an allegedly sophisticated system for matching bids and asks between carriers and shippers. Yet it makes no suggestion that carriers can group their units of capacity in the manner claimed or for the purposes recited by the claims of the present application. Given the clear advantages of providing this flexibility to carrier representatives mentioned above, it is hard to reconcile the fact that Chou makes no mention or suggestion of such a capability with the Examiner's assertion that it would have been obvious to do so.

The Applicants assert that Chou is silent on this point because the system described in Chou does not provide the carrier capacity management capabilities which would make the claimed invention useful. And because Chou's system does not provide such capabilities, one of ordinary skill in the art would simply not contemplate the functionalities of the claimed invention as an obvious addition to Chou's teachings.

Alaia's teachings do not cure the deficiencies of Chou in that the mere use of lot numbers in the context of fungible commodities does not make obvious the manner in which the present invention enables the grouping of units of carrier capacity which correspond to *specific* carrier equipment. Because the geographic and temporal issues associated with managing specific

Application No. 09/482,154
Hall et al.

page 13

carrier equipment in the logistics industry are not contemplated in the teachings of either of the references used by the Examiner, the Applicants respectfully assert that the obviousness rejections should be withdrawn.

In view of the foregoing discussion, the rejection of claims 1-11 and 40-45 over Chou are believed overcome.

The Examiner rejected claims 12-22 under 35 U.S.C. 103(a) as being unpatentable over CAPS Logistics Inc., PR Newswire (CAPS) in view of Alaia. The rejection is respectfully traversed.

CAPS generally describes a system by which shippers can organize their shipping requirements and evaluate carrier bids. Once again, the Examiner correctly stated that CAPS does not disclose key limitations of the claimed invention. The Examiner attempted to cure these deficiencies by referring to the teachings of Alaia, and by again making vague references to auction sites on the Web without providing any evidence of the existence of the specific functionality claimed, nor any evidence that any such functionality, if existing, existed prior to the filing of the present application.

Claims 12 and 16 recite a mechanism by which a carrier may be protected from having multiple shippers accept parallel bids corresponding to the same unit of capacity. As described above, such a mechanism is highly advantageous in protecting a carrier from the risks associated with doubly committing a particular unit of capacity. The Examiner referred to Alaia's lot numbers as obviating the enablement of multiple bids using a same unit of capacity as recited in claim 12. The Applicants respectfully disagree.

First, as discussed above, the lot numbers of Alaia refer to lots of fungible commodities rather than specific carrier equipment and are distinguishable on that basis alone. Moreover, Alaia's lot numbers refer to the commodities against which bids are placed and therefore have nothing to do with the generation of the bids themselves (other than being the object of the bids)

Application No. 09/482,154
Hall et al.

page 14

and do not enable the generation "of a plurality of bids" each of which corresponds "to a same unit of capacity."

The Examiner also referred to auction sites such as eBay as anticipating specific claim limitations, but again failed to provide any evidence and therefore failed to make a prima facie case of obviousness.

Bidders on auction sites such as eBay routinely make parallel bids against multiple products. The Examiner provided no evidence of a mechanism which would prevent all of such parallel bids from being accepted. That is, if an eBay bidder makes two bids for different products and they are both accepted, he is absolutely expected to pay for both. This is because the bidders on eBay are not bidding unique assets, e.g., specific carrier equipment, on the products in which they are interested. If such a mechanism exists, the Examiner must provide evidence of it along with evidence that actually qualifies as prior art under some section of 35 U.S.C. 102. Failing that, the rejection must be withdrawn.

Claims 17 and 22 recite the ability to make bids for a currently unavailable unit of capacity. The Examiner referred to the ability on auction sites to make bids for currently unavailable products. In addition to the failure to support the rejection with any documentary evidence, the Examiner's example does not apply to the claimed invention. That is, the invention allows a carrier to bid a specific unit of capacity, e.g., a truck, which is currently unavailable against a shipper load. The Examiner's example does not apply to this scenario in that the auction bidder described is bidding a fungible resource, e.g., cash or credit, against a product which is presumably out of stock. By contrast, the carrier in claims 17 and 22 is bidding a non-fungible resource, i.e., a specific unit of carrier capacity, against a load which is currently available. It is therefore submitted that the Examiner's example, in addition to being unsupported, is not applicable to the claimed invention. Again, without evidence of the Examiner's assertion qualifying as prior art under the statute, the rejection should be withdrawn.

Application No. 09/482,154
Hall et al.

page 15

In view of the foregoing, the rejection is believed overcome.

In addition, in view of the Examiner's failure to support the rejection of any of the claims of the present application with the evidence required to establish a prima facie case of unpatentability, the Applicants respectfully request that the Examiner provide such evidence, and further request that the Examiner clearly state how any such evidence, if existing, is applicable to the context of shippers and carriers which is explicitly recited in the claims.

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (510) 663-1100.

Respectfully submitted,
BEYER WEAVER & THOMAS, LLP



Joseph M. Villeneuve
Reg. No. 37,460

P.O. Box 70250
Oakland, California 94612-0250
(510) 663-1100